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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Rulemaking to Amend Parts 1,2, 21,)
and 25 of the Commission's Rules)
to Redesignate the 27.5-29.5 GHz)
Frequency Band, to Establish Rules)
and Policies for Local Multipoint)
Distribution Service and for Fixed)
Satellite Services)

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To: The Commission

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**REPLY COMMENTS OF ICE-G, INC. DBA
INTERNATIONAL COMMUNICATIONS ELECTRONICS GROUP**

ICE-G, Inc. dba International Communications Electronics Group (ICE-G) hereby submits its reply comments as permitted by the Commission's July 22, 1996 First Report and Order and Fourth Notice of Proposed Rulemaking (First Report and Order) (FCC 96-311). In support whereof, the following is respectfully submitted:

1) ICE-G has reviewed the comments filed by the various parties in this proceeding. Several commenters indicated that the Commission's 28 GHz allocation is "far from perfect" but urged that the Commission proceed to auction 28 GHz LMDS. While the Commission need not attain "perfection," the question to be answered is, "Is the plan good enough?" For the reasons discussed below, the plan is not "good enough" and the Commission should delay the licensing of LMDS in the 28 GHz band.

2) While several parties urge the Commission to proceed full speed ahead with licensing 28 GHz LMDS, there are concerns that the

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current 28 GHz allocation scheme is inadequate. ComTech Associates, Inc. states that

the ability to use one GHz of continuous spectrum will allow LMDS to become a truly competitive service Without such an allocation, LMDS will be harmed in bringing low cost, high quality telephony and video services to consumers." Comments of ComTech Associates, Inc., pp. 2-3.

3) Texas Instruments questions whether 150 MHz of the 1 GHz allocation (29.1-29.25 GHz) made by the Commission "may prove to be unduly limiting as a one-way allocation" Comments of Texas Instruments, Inc., p. 11. Despite the lack of "clean" spectrum, Texas Instruments urges the Commission "to defer action on the proposed 31.0-31.3 GHz designation, as well as any measures to facilitate expanded LMDS use of 29.1-29.25 GHz, in order to complete promptly the Fourth Notice proceeding." Comments of Texas Instruments, Inc., p. 12.

4) The Commission has indicated that "without additional unencumbered spectrum, some proposed LMDS systems would not be able to provide the full panoply of two-way services anticipated." First Report and Order and Fourth Notice of Proposed Rulemaking, FCC 96-311, released July 22, 1996, para. 97. ICE-G agrees with CellularVision that the Commission should continue its search for additional LMDS spectrum below 27.5 GHz. Comments of Cellular-Vision, Inc., p. 15. In view of the comments expressed, it does not appear that sufficient spectrum exists at this time to proceed to an auction for 28 GHz LMDS.

¹ This spectrum is shared with the Mobile Satellite Service (MSS).

5) Moreover, as noted by various commenters, licensees already occupy the 31.0-31.3 GHz band. These licensees are generally state/local governments which use the spectrum to monitor traffic signals and transmit traffic control video. Both of these uses enable congested communities to improve traffic flow thereby reducing pollution and enhancing economic productivity.

6) Urban traffic congestion causes serious losses to the economy through greatly reduced efficiency. More importantly, air pollution from standstill traffic is a major environmental problem in urban America. To combat these twin problems, various states and cities now require, at the behest of the Environmental Protection Agency, the use of reformulated (oxygenated) gasolines which are currently in short supply and which are more expensive than more standard grades of unleaded gasolines.

7) The Commission must seriously consider the environmental implications of eliminating or even stifling a nascent communications industry which holds the promise of aiding our communities in their battles against auto emissions and mind numbing, aggression inducing, economically ruinous traffic gridlock. While the Commission has, until now, licensed these pollution controlling services on a secondary basis, it would be inappropriate to remove the 31 GHz weapon from our local communities' arsenals as they battle against the scourge of auto emission pollution.

8) Displacement of environmentally useful 31 GHz communications services would be especially inappropriate where there is not

currently any LMDS equipment in the 31.0 GHz band.² No party, except the aforementioned localities, has a vested investment in the 31 GHz spectrum and no party would be unfairly harmed if 31.0 GHz were maintained for current, and future, pollution control services.³

9) Rather than stifle the efforts of local communities in battling deadly auto emissions caused by idling street traffic, the National Environmental Policy Act, 42 U.S.C. §4321, et seq., requires the Commission to continue to provide its assistance to local communities in their efforts to significantly reduce automobile induced air pollution.⁴ Because removal of air pollution control services would be an environmentally unsound policy

² See e.g. Comments of CellularVision, Inc., p. 8. CellularVision quotes the Commission's comment that "existing use of the 31 GHz band is relatively light and is concentrated in only a few areas of the country" Comments of CellularVision, Inc., p. 9. It is noted that the "concentration" occurs in urban areas with severe auto emission problems. Moreover, even if the 31 GHz band is "relatively light[ly]" populated, that is an infinitely greater population than 28 GHz LMDS licensees can claim.

³ Traffic control also has the benefit, of course, of speeding delivery of goods and commercial and emergency services, thereby enhancing productivity and the economy.

⁴ 47 C.F.R. §1.1307(c) (Actions which may have a significant environmental effect for which Environmental Assessments (EAs) must be prepared) requires the Commission to assess whether an intended action would adversely the environment. A decision to eliminate or burden providers of environmentally useful services would require the preparation of an environmental assessment before implementation.

choice, the Commission should not permit 28 GHz LMDS to operate in the 31.0-31.3 GHz band and the status quo should continue.⁵

10) Several parties urge the Commission to proceed to auction the 28 GHz LMDS spectrum even though 1 GHz of "clean" spectrum is not yet available. See e.g. Comments of CellularVision USA, Inc., p. 6. Currently, only 850 MHz of "clean" spectrum is available to 28 GHz LMDS, an amount of spectrum which the Commission has already found inadequate.

11) No legitimate public interest would be served in conducting an auction for spectrum which is incapable of fulfilling the primary objective of the proposed service, i.e., the provision of two-way video, voice, and data communications. Given the analog nature of the 28 GHz equipment and given the fact that only one LMDS licensee will be licensed per market, the public interest would not be served by the auctioning of an spectrally inadequate 28 GHz LMDS systems.⁶

12) Moreover, serious unresolved environmental issues exist with regard to the 31.0-31.3 GHz proposal. Thus, the Commission

⁵ While perhaps beyond the scope of the instant rulemaking, but in accordance with pertinent environmental laws, the Commission should consider affording pollution reduction communications services primary protection status.

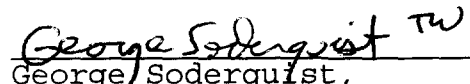
⁶ Assume that the doubtful were true and that an analog 28 GHz LMDS system could have sufficient capacity to compete with the local telephone exchange company in a large, urban market, the Commission's decision to license only one service provider would merely create a duopoly. The Commission has previously noted that duopolies did not create competitive markets in cellular radio. Thus, delaying the auctioning of 28 GHz LMDS systems will not cause any substantial public interest problems.

should defer the 28 GHz auction until sufficient "clean", environmentally safe spectrum is available for the 28 GHz analog systems.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the 28 GHz LMDS auction should be delayed until such time as adequate spectrum is found.

1433 East Second Avenue
Mesa, AZ 85204
(602) 964-8543

Respectfully submitted,
ICE-G, INC.


George Soderquist,
President

Hill & Welch
Suite #113
1330 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 775-0070
(202) 775-9026 (FAX)
welchlaw@clark.net


Timothy E. Welch

Its Attorney

August 22, 1996

SERVICE LIST

I hereby certify that on this 22nd day of August 1996 ICE-G provided courtesy copies of its Reply Comments to the following parties by First-Class United States mail, postage prepaid:

Peter A. Rohrbach
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, D.C. 20004
GE American Communications, Inc.

Douglas A. Gray
Hewlett-Packard Company
1501 Page Mill Road, 4A-F
Palo Alto, CA 94304

Allen Holden, Jr., Deputy Director
Traffic Engineering Division
City of San Diego
Executive Complex
1010 2nd Avenue
San Diego CA 92101

Douglas G. Lockie
Endgate Corporation
321 Soquel Way
Sunnyvale, CA 94086

Raymond G. Bender, Jr.
Dow, Lohnes, Albertson
1200 New Hampshire Ave., N.W. #800
Washington, D.C. 20036
Lockheed Martin Corporation

Debra A. Smilley-Weiner, Esq.
Lockheed Martin Astro Space Commercial
1322 Crossman Ave. Building 580
Sunnyvale, CA 94089

Harry Felker, Mayor
City of Topeka
215 East 7th, Room 352
Topeka, KS 66603

Don Hamada, Assistant Chief
Department of Transportation Services
City & County of Honolulu
Pacific Park Plaza
711 Kapiolani Boulevard, Suite 1200
Honolulu, HA 96813

Michael R. Gardner, Esq.
1150 Connecticut Ave., N.W. #710
Washington, D.C. 20036
CellularVision USA, Inc.

Robert L. Pettit
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Texas Instruments, Inc.

John L. Bass
Traffic Signal Coordinator
City of Long Beach
333 West Ocean Boulevard
Long Beach, CA 90802

Gary M. Epstein, Esq.
Latham & Watkins
1001 Pennsylvania Ave., N.W. #1300
Washington, D.C. 20004
Hughes Communications Galaxy, Inc.

Scott B. Tollefsen, Esq.
Hughes Communications Galaxy, Inc.
1500 Hughes Way
Long Beach, CA 90810

Larry A. Blosser, Esq.
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Jason Priest
ComTech Associates, Inc.
600 E. Las Colinas Boulevard #540
Irving, TX 75039



Timothy E. Welch